

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 27 2001

OFFICE OF
MANAGING DIRECTOR

Anthony J. Perillo
Infinity Communications Group, Inc.
Post Office Box 1769
Big Bear Lake, California 92315

86-255

Re: Infinity Communications Group, Inc.
Fee Control No.: 00000RROG-01-049

Dear Mr. Perillo:

This is in response to your correspondence (styled as a "Declaration") dated September 15, 2001, filed on behalf of Infinity Communications Group, Inc. (Infinity), in which you assert that the Commission "cannot compel" you to file FCC Form 159-W, Interstate Telephone Service Provider Regulatory Fee Worksheet, and "all related forms" based upon your Fifth Amendment privilege against compulsory self-incrimination. *September 15 Letter* at 1. You also claim that Infinity is not required to pay its fiscal year (FY) 2001 regulatory fee (which you acknowledge is "lawfully required") because Infinity meets "the *de minimis* standard[,] " a standard which you do not identify or otherwise explain. *September Letter* at 2.

The Fifth Amendment of the Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The Fifth Amendment's proscription against self-incrimination is a personal privilege and may only be asserted by natural persons. *United States v. White*, 322 U.S. 694, 698 (1944). When the privilege is invoked to protect the impersonal interests of an organization, rather than the personal and private interests of an individual within the organization, the protection of the Fifth Amendment is not available. *Id.* at 701. Under these circumstances, the Fifth Amendment privilege against self-incrimination is not available whether it is being asserted by the organization as a distinct legal body or by one of its representatives acting in an official capacity. *Id.* at 699 (individuals, when acting as representatives of a collective group such as a corporation, "assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers" and therefore "have no privilege against self-incrimination"). The privilege against self-incrimination is therefore not available to corporations, associations, or partnerships. *Wilson v. United States*, 221 U.S. 361 (1911); *Rogers v. United States*, 340 U.S. 367 (1951); *Bellis v. United States*, 417 U.S. 85 (1974); *see also United States v. White*, 322 U.S. at 699 (because the "privilege against self-incrimination is a purely personal one, it cannot be utilized by or on behalf of any organization, such as a corporation").

Infinity, as a corporate entity, lacks standing to assert the privilege against self-incrimination under the Fifth Amendment. As Infinity's (apparent) corporate representative, you cannot invoke the Fifth Amendment privilege against self-incrimination to avoid the Commission's request for information regarding Infinity as set forth on Form 159-W and related forms, including FCC Form 499-A, Telecommunications Reporting Worksheet, and FCC Form 159, Remittance Advice.¹ Forms 159-W, 499-A, and 159 request factual information regarding, for example, Infinity's revenues, various addresses, telephone number, and regulatory fee. The information requested on these forms relates to Infinity's corporate interests and not to information regarding your personal and private interests so as to justify the assertion of a Fifth Amendment privilege against self-incrimination. We therefore find that you cannot assert the Fifth Amendment privilege against self-incrimination to avoid filing Form 159-W and "related forms" (including Forms 499-A and 159) on behalf of Infinity.

Our records reflect that Infinity has not filed a Form 159-W, a Form 499-A, or a Form 159. In this regard, we find that the Commission is authorized to request the information set forth on these forms and Infinity is required to respond truthfully. *See* 47 C.F.R. §1.17. Further, Infinity is specifically required to file Form 159 (along with its FY 2001 regulatory fee) under 47 C.F.R. §1.1157(c) or be subject to a 25 percent penalty for failure to file. *See* 47 C.F.R. §1.1157(c). In addition, Infinity is specifically required to file Form 499-A or be considered in violation of 47 C.F.R. §§ 52.17, 52.32, 54.713, and 64.604. *See* 47 C.F.R. §52.713 (failure to file Form 499-A "may subject the contributor to the enforcement provisions of the [Communications] Act[, as amended,]and any other applicable law").

Our records also reflect that Infinity has not paid its FY 2001 regulatory fee. You claim that Infinity is not required to pay its FY 2001 regulatory fee because it meets "the *de minimis* standard[,]" a standard which, as indicated above, you do not identify or otherwise explain. To the extent that you may be requesting that the Commission waive Infinity's FY 2001 regulatory fee, we note that the Commission may waive, reduce, or

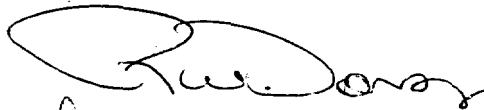
¹ Form 159-W is a regulatory fee worksheet used by the Commission and interstate telephone service providers to calculate FY regulatory fees and is based upon information previously provided by the interstate telephone service providers on Form 499-A. Form 499-A is the worksheet used by the Commission and telecommunications providers to determine contribution amounts to the Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms. Form 499-A and Form 159 are referenced on Form 159W. *See also Public Notice, FY 2001 Common Carrier Regulatory Fees*, 2001 WL 872411, (dated Aug. 3, 2001).

defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby.² We find that you have neither demonstrated that the interests of Infinity in not paying the regulatory fee overrides the public interest nor otherwise established that the public interest would be served by a grant of your request for relief. Further, you acknowledge that the fee is "lawfully required[.]" We therefore deny your request for relief.

The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that Infinity met this obligation. Therefore, payment of Infinity's FY 2001 regulatory fee is now due. \$1,980.00, plus the 25 percent late charge penalty of \$495.00, should be submitted, together with a Form 159 (copy enclosed) within 30 days of the day of this letter. If this debt is not paid, it may be transferred to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or to apply other administrative sanctions. 47 C.F.R. §§1.1161, 1.1164, 1.1940. If the Commission has to initiate collection efforts to obtain the amount owed, Infinity may be charged the accompanying administrative costs. Any payment received more than 30 days after the date of this letter may also be subject to interest. Finally, we note that Infinity is required to file all FCC forms in accordance with the Commission's rules.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operation Group at (202) 418-1995.

Sincerely,



for Mark A. Reger
Chief Financial Officer

Enclosure

² See 47 U.S.C. §159(d); 47 C.F.R. §1.1166; see also *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), on recon., *Memorandum Opinion and Order*, 10 FCC Rcd 12,759, para. 12 (1995) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs).

STATEMENT IN LIEU OF FCC FORM 159-W (and all related forms thereto)

DECLARATION

WF9

15 September 2001

Federal Communications Commission
Regulatory Fees
P.O. Box 358835
Pittsburgh, PA 15251-5835

Certified Mail #7000 1530 0004 2149 8648

RE: Infinity Communications Group, Inc.
EIN 52-2125042
FRN 0005-0088-59

Dear Gentlemen:

I, Anthony J. Perillo ("Declarant"), hereby declare the following:

With respect to Form 159-W and all related forms, documents, attachments, information, and disclosures required thereunder, I hereby in good-faith assert my Fifth Amendment Right against compulsory self-incrimination pursuant to **United States v. Sullivan, 274 U.S. 259 (1927)** and **Garner v. United States, 424 U.S. 648 (1976)**.

We have a Constitutional Amendment, the Fifth Amendment that protects us against compulsory self-incrimination. The privilege protects against the use of compelled statements (oral or written) as well as guaranteeing the right to remain silent, absent immunity. In **Garner v. United States, 424 U.S. 648 (1976)**, the Supreme Court addressed the issues regarding compulsory self-incrimination and the Fifth Amendment privilege which protects against the use of compelled statements (oral or written) as well as guaranteeing the right to remain silent, absent immunity.

"...The information revealed in the preparation and filing of an income tax return is, for purposes of Fifth Amendment analysis, the testimony of a "witness," as that term is used herein. Since Garner disclosed information on his returns instead of objecting, his Fifth Amendment claim would be defeated by an application of the general requirement that witnesses must claim the privilege..."

"...In summary, we conclude that since Garner made disclosures instead of claiming the privilege on his tax returns, his disclosures were not compelled incriminations. 21 He therefore was foreclosed from invoking the privilege when such information was later introduced as evidence against him in a criminal prosecution...."

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, concurring in the judgment.

"...I agree with the Court that petitioner, having made incriminating disclosures on his income tax returns rather than having claimed the privilege against self-incrimination, cannot thereafter assert the privilege to bar the introduction of his returns in a criminal prosecution. I disagree, however, with the Court's rationale, which is far broader than is either necessary or appropriate to dispose of this case...."

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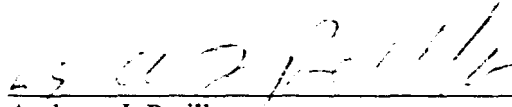
Another case worthy of review is U.S. v. Sharp (1990) which stated in part "The Fifth Amendment's protection against self-incrimination applies in any type of proceeding whether civil, criminal, administrative, investigatory, or adjudicatory."

It is my good faith belief that the Federal Communications Commission cannot compel me, against my will, to file a Form 159-W, providing information that the supreme court has stated, constitutes a witness against myself. To make such a filing requirement mandatory, would, unlawfully, force me to waive my 5th Amendment Right under the Constitution of the United States. It is my good faith belief that, because it is not within the power of the Federal Communications Commission or the government to compel me to waive any of my rights against my consent, the filing of Form 159-W cannot be mandatory and, therefore, must be voluntary.

It is my further good faith belief that the fees required pursuant to the Federal Communications Commission Form 159-W are lawfully required, accordingly we hereby declare that the herein named entity meets the *de minimis standard*, and no fees are due for FY 2001.

I, Anthony J. Perillo, hereby swear under penalty of perjury that the information contained herein is, to the best of my ability to understand the requirements of the Common Carrier Regulations, true and accurate, and any error and omission, inaccuracy or mistake is NOT intentional or voluntary.

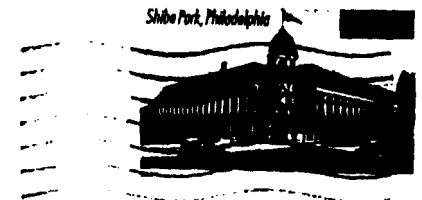
Without Prejudice UCC 1-207



Anthony J. Perillo
Infinity Communications Group, Inc.
P.O. Box 1769
Big Bear Lake, CA 92315
T: 909-866-8112
F: 909-866-4304
E: infinity@bbv.net

cc: Office of the Managing Director - FCC

PO Box 1769
Big Bear Lake, CA 92315



Office of the Managing Director
Federal Communications Commission
445 12th Street, SW, Room 1-A625
Washington, DC 20554

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FCC MAIL ROOM

Attn: REgulatory Fee Waiver